

REMARKS

Claims 9-20 are pending in the application. Claims 9-14 and 18-20 have been amended, leaving claims 9-20 for consideration upon entry of the present Amendment. The amendment to the claims conforms the claims to U.S. practice and corrects the dependency of some of the claims. Applicant respectfully requests reconsideration in view of the Amendment and Remarks submitted herewith.

Claims 9-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. Applicant has amended the claims to conform the claims to proper method claims in U.S. practice. Claim 18 has been amended to correct the indefiniteness of the claim.

As for claims 9 and 10, Applicant respectfully traverses the Examiner's rejection. In claim 9, the term "immediately" is a known term and can be found in any dictionary as being defined as something occurring without delay. As such, the Examiner's rejection is improper.

In claim 10, the formula further defines the pasteurisation units. Claim 9 claims "a maximum quantity of pasteurisation units (PU)" and does not specifically limit the definition for the pasteurisation units. Generally, the basic definition of 1 PU is the degree of annihilation achieved by heat-holding time of one minute at 60° C. The formula given in claim 10 is valid for thermal steady states, which are different from a heat-holding time of one minute at 60° C. Accordingly, claim 10 does further define claim 9. Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

Claims 9-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over De Stoutz et al. (US 3,394,042) ("De Stoutz") in view of Applicant's admissions. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Claims 9-20 include the following limitation: "immediately cooling the drink product after the maximum temperature has been reached." As shown in Figure 2 of the application, the

maximum temperature is reached and then the cooling begins immediately. In other words, the maximum temperature is not held for any length of time and the cooling of the drink product begins without delay after the maximum temperature has been reached.

De Stoutz does not teach or suggest this limitation. Instead, De Stoutz teaches that the elevated temperature of the beverage is maintained for a period of time sufficient to complete sterilization at that temperature. See column 2, lines 58-61. There is no teaching of an immediate cooling after a maximum temperature has been reached.

In addition, claims 9-20 include the following limitation: "wherein a maximum quantity of pasteurisation units (PU) to be applied for the pasteurisation of the drink product is computed, and then a temperature variation and length of said heating, and a temperature variation and length of said cooling are chosen, such that during pasteurisation, the number of pasteurisation units previously calculated corresponds to the total number of pasteurisation units actually applied during said heating and said cooling." De Stoutz does not teach or suggest this limitation.

The basic principle of the temperature variation during the pasteurization process according to the invention is shown in Figure 2 of the pending application. The area within which pasteurization units are applied to the product and which is taken into account to compute the pasteurization units, is the total (hatched) area under the curve in the region of the heating phases 31, 32 and the cooling phase 34 located above the pasteurization temperature. The amount of pasteurization units is controlled during the pasteurization process so that no given temperature variation or reference curve is needed. The system reacts upon the current temperatures in a thermal non-steady state and upon the current product flows and maintains the amount of pasteurization units by appropriate control. Thus, it is possible to reach a maximum temperature, which is higher than the maximum temperature, which can be reached by other known thermal steady state methods, without having an over pasteurization of the product.

In addition, claim 20 requires that the drink product is beer. There is no motivation to use the pasteurization process of De Stoutz in combination with a beer product. De Stoutz cannot be used for teachings as to beer since De Stoutz teaches irradiating the drink product with light in the ultra-violet range and also heating to temperatures as high as 85° C. As is well known in the art irradiating beer with light in the ultra-violet range as well as heating beer up to

85° C will harm the ingredients of beer. Accordingly, the method of De Stoutz is not suited to the pasteurization of beer.

Accordingly, De Stoutz does not teach or suggest all of the limitations of the claims. Applicants respectfully request the rejection under 35 U.S.C. § 103(a) be withdrawn.

In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicants' attorney hereby authorizes that such fee be charged to Deposit Account No. 06-1130.

Respectfully submitted,

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